

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 8, 2013 at 2:00 p.m.

1.	<u>13-29700</u> -C-13	BRUCE/DEBORAH FELT	OBJECTION TO CONFIRMATION OF
	TSB-1	Christian J. Younger	PLAN BY DAVID P. CUSICK
			9-12-13 [<u>27</u>]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on September 12, 2013. 14 days' notice is required. This requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because the Plan relied on a pending motion, namely Debtor's Motion to Value Collateral of New York Community Bank. Trustee argued that if the motion was not granted, Debtor's plan would not have sufficient monies to pay the claim in full.

The Motion to Value Collateral, however, was heard on September 24, 2013, and was granted by this court. Because Trustee's only issue with the plan has been resolved, the court will overrule the Objection as moot.

The court shall issue a minute order substantially in the following form holding that:

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Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Trustee's Objection to Confirmation is overruled as moot.

2. [13-30400](#)-C-13 BRIDGET EDWARDS
MRG-1 Richard Kwun
OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
8-20-13 [[14](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and U.S. Trustee on August 20, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Capitol One Auto Finance, objects to confirmation of Debtor's Chapter 13 Plan on the following:

(1.) Pursuant to 11 U.S.C. § 1322(b)(5), the Plan does not provide the curing of the default and maintenance payments on Capitol One's claim. Creditor has a secured claim in the amount of \$12,812.39, including arrearage in the amount of \$377.20, secured by a 2010 Pontiac Vibe. Debtor has not provided for the curing of the default in the amount of \$377.20. Further, Debtor has not provided for the maintenance payments on Secured Creditor's claim of \$12,812.39 either directly or through Trustee plan payments.

(2.) Pursuant to 11 U.S.C. § 1325(a), Debtor may not lienstrip a debt incurred within 910 days prior to the filing of the petition and the Property is for the personal use of Debtor. According to Debtor's Schedules, Property was acquired for personal use on July 13, 2011. Because less than 910 days have passed prior to filing of the petition on August 6, 2013, Debtor cannot lienstrip Secured Creditor's claim.

(3.) Under 11 U.S.C. § 1325(a)(5)(B), the plan does not provide sufficient payments to Creditor for adequate protection. According to the Plan, Debtor has provided an interest rate of only 0.00% on Creditor's claim. The original interest rate on Secured Creditor's claim, however, is 21.49%. The Plan does not provide adequate protection on its secured claim. Creditor requests that the court look to the current national prime rate and adjust the interest rate upwards to 10% to reflect specific factors

including the nature of the loan, the quality of the Creditor's security, and the risk of default; or such other rate of interest as determined by the court.

Debtor's Response

Creditor and Debtor entered into a stipulation on August 26, 2013 that Wells Fargo shall have an allowed claim of \$12,812.39, and that Creditor Capital One shall be paid a dividend of \$243.27 a month, pursuant to the filed proof of claim (Claim 1) and an interest rate of 5.25%. Debtor and Capitol One also stipulated that the Order Confirming Debtor's Chapter 13 Plan shall incorporate the foregoing terms by reference.

In light of the stipulation regarding Creditor's claim filed on August 26, 2013, the objection will be overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Capitol One Auto Finance having been presented to the court, a stipulation resolving this Objection having been filed by the parties, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled.

3. [13-28106](#)-C-13 CANICE/MONICA NJOKU CONTINUED MOTION TO VALUE
MAC-1 Marc A. Caraska COLLATERAL OF NATIONSTAR
MORTGAGE AND FLAGSTAR BANK
7-11-13 [[16](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Value Collateral and determine the value of creditor's secured claim to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 4256 Arnold Way, Mather, California. The Debtors seeks to value the property at a fair market value of \$315,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$381,299.89. Flagstar Bank's second deed of trust secures a loan with a balance of approximately \$43,892.14. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

Flagstar Bank, Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$435,000.00. Creditor argues that under 11 U.S.C. § 506(a), the value of a property is a factual issue and, in this instance, requires the admission of expert testimony. Creditor requests a continuance for at least 30 days to obtain its own verified appraisal of the subject property.

Initial Hearing

At the hearing on the Motion held on August 20, 2013, the court granted a continuance to October 8, 2013 to permit time for Creditor to obtain a verified appraisal.

Final Hearing

Creditor has not filed a verified appraisal or other evidence as to value in this Contested Matter. To the extent the creditor objects to the debtor's opinion of value, that objection is overruled, particularly in light of its failure to present any evidence of value to counter that of the Debtor. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' Motion to Value.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Flagstar Bank secured by a second deed of trust recorded against the real property commonly known as 4256 Arnold Way, Mather, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is \$315,000.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

4. [13-29806](#)-C-13 BRIAN/RACHEL DROULLARD OBJECTION TO CONFIRMATION OF
NLE-1 Richard Kwun PLAN BY DAVID P. CUSICK
9-4-13 [[31](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on September 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to confirmation of Debtors' Plan on the following grounds:

(1.) Debtors' Plan relied on the Motion to Value Collateral of Harley Davidson Financial Services, PK-2, pending at the time this objection was filed. The Motion to Value Collateral was heard and subsequently granted by this court on September 10, 2013. This issue has thus been resolved.

(2.) Debtors' Plan does not represent their best efforts. Debtors are above median income, but propose a 60 month plan paying 1,040.00 per month with a guaranteed dividend of 100% to general unsecured claims. Debtors have not proposed to pay all disposable income into the Plan for its duration. Debtors' Schedule J shows a net disposable income of \$2,593.98 per month and Debtors propose to pay only \$1,040.00.

At the meeting of creditors held on August 28, 2013, Debtors admitted that they are not saving the \$1,300.50 per month Debtors have deducted on line 12 of Schedule J for tax under withholding. Debtors received \$9,669.00 in tax refunds from their 2012 tax filings; therefore, the deduction does not seem reasonably necessary. Debtors also report having 3 separate deductions for 401K loans on Schedule 1, in which they do not provide payoff dates for loans. Debtors currently appear to have a net disposable income of \$3,884.48.

Debtors' Response

Debtors respond that the court should overrule Trustee's second point because no consideration was taken of known or virtually known

financial events. In re Lanning, 130 S.Ct. 2464 (2010). Debtors argue that the Plan represents their best efforts on the following grounds:

(1.) Debtor wife's employment award will cease in 12 weeks. Deducting unemployment income results in disposable income of \$1040 per month.

(2.) The tax expense of \$1,350 is prospective as is the tax on unemployment which Debtor wife is currently electing not to be withheld. For this and the past year, Debtors have been claiming 99 deductions, effectively paying no taxes besides Medicare and Social Security.

(3.) Debtor husband is the sole breadwinner, and his work is dependent on the weather. Rain precludes work, while clear conditions do not.

(4.) Debtors' current monthly income reflects income earned in the season with the most work. With the summer ending, Debtor husband will likely be receiving lower earnings.

(5.) Trustee presumes that Debtors receive \$9,669 in tax refunds each and every year. The refund received for 2012 was a one time occurrence most likely due to Debtor wife working in the 2012 tax year.

(6.) Debtors note that the Internal Revenue Service filed a claim for \$3,648.11 for the 2011 tax year.

(7.) Debtors' 401K obligations consist of:

(A.) Loan 1- Bi-weekly payment of \$113.47, with 105 payments remaining.

(B.) Loan 2- Bi-weekly payment of 35.16, with 58 payments remaining.

(C.) Loan 3- Bi-weekly payment of \$79.56, with 45 payments remaining.

Debtors have proposed to pay \$1,300 per month, an offer to which Trustee has not directly responded.

Trustee's Reply to Debtors' Response

(1.) Trustee agrees that because the Motions to Value the Collateral of Santander Consumer and Harley Davidson were granted, this part of the objection is now moot.

(2.) Trustee maintains that the Plan does not represent the Debtors' best efforts. The plan does not propose to pay interest to unsecured claims, so it does not pay each claim the full value as of the effective date of the Plan. The court may not be willing to presume good faith pursuant to FRBP 3015(f) where Debtor retains a significant surplus each month, the first factor in the good faith analysis of In re Warren 89 B.R. 87, 93 (9th Circ. BAP 1988).

Trustee objected to the fact that Debtors have not proposed to pay all disposable income. Debtors' Schedule J shows a net disposable income of \$2,583.98 per month and Debtors propose to pay only \$1,040.00 so that Debtor could increase their plan payment by \$1,543.98 per month based on the Schedules I & J filed, more than doubling the plan payment.

Debtors also admitted at their 341 meeting that they are not saving \$1,300.50 per month reported as a deduction on Schedule J for tax under withholding (Court Dckt. #31, page 2, lines 14-17).

(a.) Unemployment compensation: Debtors respond that Debtor wife's unemployment income will cease. Debtor's Schedule I does not indicate this on Lines 17 or 11. Debtor's Statement of Financial Affairs reflects no unemployment income received on Question 2. Debtor has not indicated which Debtor had employment income in 2013, 2012, and 2011, but if the income listed on Question 1 of the Statement of Financial Affairs is for both Debtors, Rachel Drouillard in 2011 and 2012 appeared to have income at a rate between \$1,565.08 and \$1,916.66 per month. Unemployment benefits can last 26 weeks if qualifications are met. Debtors have not explained how many weeks of unemployment benefits have been received, and why the income is necessary for maintenance of the household in the interim.

(b.) Tax withholding expense: Debtor indicates that they have been claiming 99 deductions on spouse's income, and Debtor admitted at the 341 meeting that they were not saving the \$1,300.50 per month indicated on Schedule J as a tax expense (DN #1, Page 29). Schedule B reflected as to cash and accounts, only \$50 cash on hand, \$289 in a checking account, and \$350.00 in a checking account at the time of filing. (DN #1, Page 13).

(c.) Employment income: Debtors argue that Brian Drouillard's income will be less than on Schedule I and Form 22c as it is reliant on the weather. Rachel Drouillard declares that "rain precludes work..." (Declaration, DN #40, Page 2, Line 5). The declarant, however, is not the person working as a lineman for PG&E, and Trustee objects based on lack of personal knowledge. PG&E crews do work in inclement weather to restore power, though Trustee is not aware of whether the position of lineman is included.

(d.) Tax Refunds: Next, Debtors argue that Trustee "presumes" that Debtors will continue to receive \$9,669 in tax refunds each year. Opposition states that the cause of refund was likely that Debtor wife worked in 2012, and refers to the IRS claim for 2011 taxes for \$3,648.11 to show that they did not receive a dividend in 2011.

Based on \$137,000.00 of employment income in 2011 disclosed on Statement of Financial Affairs, (DN #1, Page 31, Question 1), it appears that Rachel Drouillard was also working in 2011, so Debtors' explanation of why Debtor got a refund in 2012 but did not get one in 2011 does not appear adequate.

(e.) 401K Loans. Debtors discuss their 401k loans and indicate the term of the loans, but have not proposed to increase their plan upon paying off each loan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. Therefore, the court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

5. [13-30112](#)-C-13 BRENT/BONNIE NAPTON OBJECTION TO CONFIRMATION OF
NLE-1 Pauldeep Bains PLAN BY DAVID P. CUSICK
9-4-13 [[21](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on September 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Under 11 U.S.C. § 1325(a)(6), Debtors cannot afford to make payments or comply with the Plan because the Plan relies on the Motion to Value Collateral of Wells Fargo Bank, BLG-1, which is set for hearing on September 10, 2013. The Motion was granted by this court, rendering this issue moot.

(2.) Under 11 U.S.C. § 1325(a)(2), Debtors are delinquent \$376.00 in plan payments to Trustee to date, and the next scheduled payment of \$376.00 was due on September 25, 2013. Debtors have paid \$0.00 into the plan to date.

(3.) Under 11 U.S.C. § 1325(a)(4), Debtors' Plan does not meet the Chapter 7 liquidation analysis. Debtors' non exempt equity totals \$20,384.66 and Debtors are proposing a 3.9% dividend to unsecured creditors, paying approximately \$12,874.00 toward unsecured claims. On Schedule B, #35, Debtors list interest in note payable to Debtors in the amount of \$34,040.25, but value it at \$26,500.58. Debtors are currently receiving payments on the contract in the amount of \$1,163.41 (Schedule I, DN #1, page 29, line #13). Debtors have not disclosed why it is reasonable to discount

the note as it appears the payments are being made, are not in default, and Debtor's budget relies on the income.

(4.) Under 11 U.S.C. § 1325(b), it does not appear that the Plan provides all of Debtors' projected disposable income for the applicable commitment period. According to Debtors' federal and state income tax returns, Debtors receive a combined \$5,823.00 tax refunds. On Schedule I, Debtors report their net average net income of \$4,694.05 per month. If Debtors contributed their tax refund into their household income at 1/12 per month, they would have an estimated additional \$482.25 per month.

Debtors' Response

Debtors respond to Trustee's Objection as follows:

(1.) Debtors' Motion to Value Collateral of Wells Fargo Bank, N.A., was granted on September 23, 2013 (Dckt. #27).

(2.) Pursuant to their Chapter 13 Plan, two payments have become due as of October 1, 2013. The proposed monthly payment is \$367.00. Debtors have paid \$752.00 into the plan to date, and thus are current on payments.

(3.) Debtors dispute Trustee's characterization of the Plan as not meeting a liquidation analysis pursuant 11 U.S.C. § 1325(a)(4). Debtors argue that in a Chapter 7 liquidation, it would be reasonable to presume that a Chapter 7 Trustee would sell the estate's interest in the Note to a purchasing agent, with an asset value determined on the date of the bankruptcy filing. The valuation of a note in a Chapter 7 would take into account the risk of payments stopping, and possible costs of litigation, and the position of the note.

Debtors argue that it would be "reasonable to say" that a Trustee would accept and a judge would approve the estate selling the note at 50% to 75% of the total dollar value, which would be \$17,020.13 and \$25,530.19 for the note in this case. Had this case been filed under Chapter 7, the estate would have received an amount in that range. Under a Chapter 13 plan of reorganization, the estate is receiving \$26,500.58, minus any exemptions. Debtors thereby assert that the Plan passes liquidation.

As to this point that a trustee would engage in the dumping of assets, and such conduct would be approved by the court, is without merit. The court uses the fair market value of assets. A trustee markets and sells assets using reasonable business methods and such professionals as appropriate (the expense of which would be considered in determining the liquidation value for creditors). However, the court will not just cut the value of an asset to 50% based on the Debtors' assumption that a lazy trustee would only get that amount.

(4.) Debtors state that they are contributing all of their disposable income into the Plan. Prior to filing for bankruptcy, and while both Debtors were working full-time, Debtors were expending \$1,800 to \$2,000 per month on day care for their two children, ages 3 and 4 and the time of the filing of the petition. At the time of filing, Debtor had not started his full time school position, and joint Debtor was on summer vacation as a

teacher--so Debtors did not need day care. Currently, one Debtor is no longer working and thus, the household's tax refund will be lower in the next year. Joint Debtor is now back at working, working full time, and other Debtor is now in school full time.

Debtors argue that lowering the amount spent on child care to \$485.25 per month is "more than reasonable," as Debtors must provide basic childcare for their two children while they engage in full time work and education.

Debtors do not address Trustee's last two grounds for objection, and mischaracterize Trustee's arguments. For instance, Debtors dispute the costs of childcare as listed on their Plan, but do not address Trustee's contention that the Plan does not provide for all projected disposable income. Debtor does not account for their tax refunds in their Plan. It appears that Debtors have not corrected the deficiencies of their Plan. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

6. [12-37113](#)-C-13 ROBERT/CAROLYN TIENKEN MOTION TO CONFIRM PLAN
MAC-9 Marc A. Caraska 8-19-13 [[141](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [13-28113](#)-C-13 ALBERT WINSTON BAUTISTA MOTION TO VALUE COLLATERAL OF
BMV-3 Bert M. Vega WELLS FARGO HOME EQUITY
9-10-13 [[37](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 502 Brix Marina Ct., Fairfield, California. The Debtor seeks to value the property at a fair market value of \$272,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$385,547. Wells Fargo Home Equity's second deed of trust secures a loan with a balance of approximately \$190,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Home equity secured by a second deed of trust recorded against the real property commonly known as 502 Brix Marina Ct., Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$272,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

8. [13-29813](#)-C-13 SANDRA JONES-RAMSEY OBJECTION TO CONFIRMATION OF
NLE-1 Richard Kwun PLAN BY DAVID P. CUSICK
9-4-13 [[33](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Under 11 U.S.C. § 1325(a)(2), Debtor is \$100.00 delinquent in Plan payments to Trustee to date, and the next scheduled payment of \$100.00 is due on September 25, 2013. Debtor has paid \$0.00 into the Plan to date.

(2.) Under 11 U.S.C. § 1325(b), it does not appear that the Plan provides all of Debtors' projected disposable income for the applicable commitment period. Debtor admitted at her 341 meeting on August 29, 2013 that she receives \$400 per month for In Home Support funds for her sister; Schedule I shows a dependent, a sister aged 60 (DN #1, Page 20.). This income is not reported on Schedule I, and no income for the sister is reported on Schedule I.

Debtor's Response

Debtor responds by stating that she is no longer delinquent, and that on August 30, 2013, she amended her Schedules I and J to reflect the income she receives as a caregiver, and the associated expenses for caregiving.

A review of the docket reveals that Debtor has filed amended Schedules I and J, to reflect the additional income and expenditures associated with Debtor's care for her sister. Thus, Debtor has corrected the issues raised by Trustee, and the Objection to Confirmation will be overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee
having been presented to the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to
confirmation the Plan is overruled as moot.

9. [13-28817](#)-C-13 ADRIAN ROBERTS CONTINUED OBJECTION TO
TSB-2 Richard Kwun CONFIRMATION OF PLAN BY DAVID
P. CUSICK, TRUSTEE
8-7-13 [[22](#)]

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 7, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

(1.) Under 11 U.S.C. § 1322(d), the Debtor's Plan exceeds the maximum amount of time for the Debtor to complete payments. The Debtor lists \$64,000 in mortgage arrears with a monthly dividend of \$608.83. At this rate, the Debtor would have to pay \$1,066.67 per month to pay the entire arrearage claim within 60 months. The Debtor has filed a declaration indicating that the arrearage amount of \$64,000 is a mistake, but has not provided the correct amount of arrearage for evaluation.

(2.) The Trustee argued that the Debtor had not provided for a secured claim against the residential real property at 7726 Quinby Way, Sacramento, California, in violation of 11 U.S.C. § 1325. The Debtor, however, filed a Motion for Valuation of Collateral of the 7726 Quinby Way, Sacramento, California property, and the Motion was granted on August 27, 2013. Thus, this issue with the Plan is resolved.

(3.) The Plan may fail liquidation, in that it does not pay unsecured creditors what they would receive in the event of a Chapter 7, 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$33,930.00, while the Debtor is proposing a 0% dividend to unsecured creditors. The Debtor is married, but has not included his spouse in the bankruptcy. Additionally, Debtor has not filed a Spousal Waiver for use of the California State Exemptions under the CCCP § 703.140. The Trustee's Objection to Exemptions, TSB-1 is set for hearing today.

(4.) The Plan does not represent the Debtor's best efforts under 11 U.S.C. § 1325(b), on the basis that Debtor's projected disposable monthly income listed on Schedule J totals \$2,495.00. The Debtor, however, is proposing a plan payment of only \$2,150.00 for the first 12 months.

Trustee's Objection to Confirmation was heard on September 10, 2013, and continued to allow Debtor to supplement pleadings to support confirmation of the Plan and respond to Trustee's Objection.

Debtor's Response, filed September 11, 2013

Debtor filed two Supplemental Declarations on September 12, 2013 (Dckts. #36-37), which did not include the hearing date and time. It appears, however, that the declarations function as a response to Trustee's Objection. Debtor responds to Trustee's arguments as follows:

(1.) The amount of arrears on the date of Debtor's bankruptcy filing was the equivalent of approximately 2.5 years of missed home loan payments on his 1st Deed of Trust.

(2.) The amount of \$64,000 in arrears was an error because Debtor contends that he is "not that much behind" on his home loan.

(3.) Debtor states that he is \$31,800 behind prior to the filing of his Chapter 13 bankruptcy.

(4.) Debtor states that he is not married.

Trustee's Reply to Debtor's Supplemental Declarations, filed September 20, 2013

(1.) Debtor's supplemental declaration indicates that his mortgage arrears were erroneously listed as \$64,00 but are actually \$31,800. This resolves #1 of Trustee's objection.

(2.) The court's granting of Debtor's Motion to Value Collateral, RK-1, on August 27, 2013 resolves #2 of Trustee's objection (which raised the concern that Debtor's 2nd Deed of Trust held by PLM Lender Services was not provided for in the plan). This issue is thus resolved.

(3.) Debtor had indicated on Schedule I that he was married, but did not file a spousal waiver to allow him to claim the 703 exemptions. Debtor's Supplemental Declaration indicates that he is not married, so this resolves Trustee's concerns regarding liquidation.

(4.) The final cause for objection is whether the Plan represents Debtor's best efforts.

a. Schedules I and J show that \$2,495.52 is available. Debtor's Plan proposes to pay \$2,150 for 12 months and \$2,495 for 48 months. Debtor's Schedule J shows a net disposable income of \$2,495. Trustee is uncertain why Debtor has not proposed all disposable income into the Plan for the first 12 months. (Form 22C, Dckt. #1, pg. 36 asserts that Debtor is below median income).

b. Debtor has \$600.00 more in rent than shown on Schedule I. Schedule I shows that Debtor earns \$2,414.53 in net wages, \$500 from business operations, and \$1,200 in rents for a total net income of \$4,114.53. In support of his Schedule I, Debtor has filed declarations by renters Issac Pantega, Anthony James Robert, and Jeff Fellows (Dckt. #'s 27, 28, and 37). Each of these declarations indicate that the party pays Debtor \$600 per month for rent. This would result in combined rents of \$1,800.00.

The projected net disposable income is \$3,095.13, so that the Plan payment can increase by \$945.13, \$600 more than shown on Schedules I and J. The Plan payment can increase to \$3,095.00.

Debtor has not resolved the matter of proposing that all net disposable income be paid into the Plan, and does not account for rental profits that would affect Plan payment. Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325. The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
confirmation the Plan is sustained and the
proposed Chapter 13 Plan is not confirmed.

10. [11-39520](#)-C-13 WANDA EFFERSON-BLAKE MOTION TO INCUR DEBT
JT-3 John A. Tosney 9-20-13 [[60](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 20, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the motion to incur debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor moves the court for an order granting permission incur debt to finance the purchase of a new vehicle. Debtor's current vehicle, a 2005 Yukon, is provided for in Class 2 of her plan. The vehicle is no longer running and Debtor has been borrowing a vehicle to commute to work. Debtor wants to continue paying for the vehicle through her plan. She does not want to surrender it because she has invested a substantial amount of money into it and plans to have it repaired so her children may use it to learn how to drive.

The new vehicle Debtor seeks to acquire is a 2013 Nissan Rogue. The amount of the loan for the new vehicle would be \$21,608.56. The length of the loan is 72 months at an interest rate of 21.79%. The monthly payment would total \$545.07 per month. A deferred down payment of \$5,500.00 will be paid by Debtor's mother.

The court's decision is to deny Debtor's Motion to Incur Debt. Pursuant to Local Bankr. R. 9014-1(d)(5), each motion, opposition and reply shall cite the legal authority relied upon by the filing party. Here, Debtor did not provide the legal authority for the court to approve an automobile loan. This is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

The court also notes that the Debtor has not offered any reason as to why she needs to purchase a 2013 vehicle and suffer the significant drop in value during the first three years of depreciation. She also does not state why or how the court can find that a 21.97% interest rate is reasonable, and not a sign that the lender "knows" that the Debtor will default in the payments and must gouge out as much interest as possible to cover the creditor when that default occurs. The Debtor does not address any alternative vehicles which she could purchase with the \$5,500.00 from her mother, what she can get for her existing vehicle (it appears too expensive to keep for her children to drive), and what significantly smaller amount to finance would cost.

The Debtor states that she wants to keep the existing vehicle, a 2005 Yukon, and continue to make \$261.56 a month payments, but that the vehicle is not running and needs substantial transmission work. Over the remaining 36 months of the plan the Debtor will "invest" \$9,416.16 into this non-working vehicle, holding it as a possible vehicle for her children to drive three years from now when, out of bankruptcy, she can invest additional monies to make the transmission repairs that she cannot afford to do now under the plan.

If the court were to approve this financing and allow the double vehicle payments, the Debtor's vehicle payments would be \$806.55 for one running vehicle.

The Debtor has not show grounds for the court to approve the motion. The substance of the Debtor's request, seeking to purchase a 2013 vehicle because it is "necessary," seeking to continue to make \$261.56 month payments on a non-running 2005 Yukon, \$120.00 month for vehicle insurance, paying an additional \$547.07 monthly payment for the 2013 vehicle, paying additional insurance for the 2013 vehicle, and paying registration on the new 2013 vehicle manifest at best an abject failure to understand the basis (and substantial benefits) of a Chapter 13 restructure or a willful, intentional act of bad faith.

The Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Incur Debt is denied.

11. [13-26421](#)-C-13 SHARON BORDEN MOTION TO CONFIRM PLAN
DSP-1 Deepak S. Parwatar 8-14-13 [[54](#)]

CASE DISMISSED 9/5/13

Final Ruling: The case having previously been dismissed on September 5, 2013, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

12. [13-29322](#)-C-13 ROSANNA MAGNISI MOTION TO VALUE COLLATERAL OF
PGM-2 Peter G. Macaluso U.S. BANK, N.A..
9-5-13 [[33](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2484 Sandpiper Lane, West Sacramento, California. The Debtor seeks to value the property at a fair market value of \$250,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$346,952.00. U.S. Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$31,286.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of U.S. Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 2484 Sandpiper Lane, West Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$250,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

13. [13-32222](#)-C-13 MOHAMMED KHAN
RJ-1 Richard L. Jare

MOTION TO VALUE COLLATERAL OF
CALIBER HOME LOANS, INC.
9-24-13 [[20](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3628 Ridgeview Drive, El Dorado Hills, California. The Debtor seeks to value the property at a fair market value of \$370,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$406,822.00. Caliber Home Loan's second deed of trust secures a loan with a balance of approximately \$151,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of GMAC Mortgage secured by a second deed of trust recorded against the real property commonly known as 3628 Ridgeview Drive, El Dorado Hills, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$370,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [13-24823](#)-C-13 GARRETT/ASHLEY WARREN MOTION TO APPROVE LOAN
PGM-1 Muoi Chea MODIFICATION
Thru #15 8-30-13 [[30](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on August 30, 2013. 28 days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Approve Loan Modification is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Debtors request permission from the court to enter into a trial loan modification agreement with Creditor, Wells Fargo Bank, N.A.. Creditor holds a deed of trust against Debtors' property, commonly known as 990 Sierra View Circle #8, Lincoln, California.

The terms of Debtors' trial loan modification agreement require Debtors to make three, timely monthly payments of \$1,002.44 beginning September 1, 2013, with the last payment due November 1, 2013. After completing the trial period, the mortgage will become permanently modified. Any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan, along with any other past due amounts. A copy of the trial period loan modification agreement with Wells Fargo Bank, N.A., containing its precise terms, is attached to the instant motion as an exhibit. (Dkt. 33).

The court will enter an order approving the trial period plan payments and requiring Debtor to submit a later motion to approve the final terms of the permanent loan modification once the trial period is complete.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Loan Modification is granted and the Debtor may commence making the three required payments of \$1,002.44.

IT IS FURTHER ORDERED that once Debtor completes the trial period plan payments and receives a permanent loan modification offer from Bank of America, N.A., a motion to approve the terms of the permanent modification will be presented to the court.

15. [13-24823](#)-C-13 GARRETT/ASHLEY WARREN MOTION TO MODIFY PLAN
PGM-2 Muoi Chea 8-30-13 [[36](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Section 2.06 of the plan incorrectly states that Debtors' attorney was paid \$1,000.00 prior to filing when the Attorney Disclosure reflects that Debtors' attorney was paid \$1,500.00.

The court will confirm Debtors' modified plan based on the the Order Confirming the Plan containing the Debtors' amendment to correct the typographical error concerning the amount of attorney compensation.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified
Chapter 13 Plan filed by the Debtors having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 30, 2013, as amended, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that in the Order Confirming the Plan, Debtor will correct the typographical error concerning attorney compensation.

16. [13-30229](#)-C-13 MATTHEW/MISTY BARBOUR OBJECTION TO CONFIRMATION OF
TSB-1 Scott J. Sagaria PLAN BY DAVID P. CUSICK
9-12-13 [[22](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on September 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Section 2.06 of the Plan lists attorney fees due of \$2,281.00; however, section 2.07 of Debtors' Plan lists a monthly dividend of \$0.00 to be paid for administrative expenses.

(2.) The Plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b) because of discrepancies in two of Debtors' Schedules:

(a.) Schedule I: Debtors' Schedule I lists two 401K loans as payroll deductions. Loan #1 is listed at a payment of \$283.27, and Loan #3 is listed as \$274.05. Debtor provided a Fidelity summary of the loan balances to Trustee, and this statement indicates the payment for Loan #3 is actually \$72.64 bi-weekly, which amounts to \$157.37 per month. This amount also matches Debtors' paystubs.

Debtors have additional funds which may be paid into the plan. Debtors' Schedule I lists a stock purchase of \$260.00 per month, and Debtor testified at the First Meeting of Creditors on September 5, 2013, that this was a voluntary stock purchase. Trustee does not believe the stock purchase is

reasonable and necessary where Debtors propose to pay 0% to unsecured creditors.

(b.) Schedule J: Debtors' Schedule I indicates Debtors have separated. Schedule J contains two separate schedules and indicates that there are two separate households. Debtors' Petition, however, list the same address for both Debtors and Debtors have testified that they are living in the same home. The schedules indicate two rent expenses, one for \$1,900 per month and one for \$600.00 per month. Trustee requests written evidence that Debtors actually pay this amount of rent. If they do not, the excess funds should be paid into the plan until such time as Debtors no longer reside together.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

17. [12-20030](#)-C-13 SHERMAN/MAXINE THOMPSON OBJECTION TO CLAIM OF FRANCHISE
SJS-2 Scott J. Sagaria TAX BOARD, CLAIM NUMBER 30-1
Thru #18 8-22-13 [[51](#)]

Local Rule 3007-1(c) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 22, 2013. 44 days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to sustain the Objection to Proof of Claim number 30-1 of the Franchise Tax Board and allow the claim as a priority claim in the amount of \$45.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor objects to Claim No. 30-1 of the Franchise Tax Board in the amount of \$10,694.52. Debtor disputes owing the claimed amount and seeks an order from the court providing that the claim be allowed as a priority claim in the amount of \$45.00.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

In support of the objection, Debtors filed the following evidence:

(1.) Proof of Claim 30-1 (Exh. A, Dkt. 34) with attachments.

(2.) Debtors' 2010 CA State Income Tax Returns (Exh. B, Dkt. 34).
Line 94 of Debtors' 2010 California Income Tax Return shows a tax due of \$45.00.

(3.) Declaration of Debtors, contending that they do not owe more than \$45.00 income tax for the year 2010 to the California Franchise Tax Board. (Dkt.)

Debtors dispute a total amount claimed of \$10,694.52. This figure is a combination of two amounts. First, for the tax period ending December 31, 2011, \$76.00 as an unsecured priority claim for unpaid balance due after return being filed. Second, for the tax period ending December 31, 2010, \$10,369.00 as an unsecured priority claim for no return being filed.

Debtors offer no evidence negating the validity of the \$76.00 portion of the claim. Debtors did submit a copy of their 2010 tax return, indicating that the return was filed; however, the return is unsigned and titled "for information only." There is no evidence that the return was actually filed. Furthermore, Debtors' declaration does not clearly confirm that the return provided as Exh. B was filed and when. The evidence before the court is minimal; however, given that the Franchise Tax Board has not responded to Debtors' properly served Objection, the court sustains the objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of the Franchise Tax Board filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 30-1 of the Franchise Tax Board is allowed as a priority claim in the amount of \$120.00 (\$45.00 for 2010 and \$76.00 for 2011), and disallows the balance of the claim.

18. [12-20030](#)-C-13 SHERMAN/MAXINE THOMPSON OBJECTION TO CLAIM OF INTERNAL
SJS-3 Scott J. Sagaria REVENUE SERVICE, CLAIM NUMBER
12-1
8-22-13 [[58](#)]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 22, 2013. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to sustain the Objection to Proof of Claim number 12-1 of the Internal Revenue Service and allow the claim as a priority claim in the amount of \$18,357.00 and \$833.51 as a general unsecured claim. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 26 on the court's official claims registry, asserts a \$24,669.85 unsecured priority claim. Debtors dispute owing a priority amount of \$24,669.85 and seek an order from the court providing that the priority claim is \$18,357.00.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The IRS bases its priority claim on the taxes assessed on Debtors for tax periods spanning from December 31, 2008 to December 31, 2011, which total \$23,696.30. Accrued interest was calculated to be \$973.55, bringing the total for the unsecured priority claims to \$24,669.85. Creditor also assessed a \$833.51 penalty for non-payment of the unsecured priority claims.

Based on the evidence before the court, the creditor's claim is allowed as a priority claim in the amount of \$18,357.00. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of the Internal Revenue Service filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 12-1 of the Internal Revenue Service is allowed as a priority claim in the amount of \$18,357.00, and \$833.51 as a general unsecured claim.

19. [13-21431](#)-C-13 MITCHELL/KRISTEN ROBINSON MOTION TO MODIFY PLAN
DBJ-4 Douglas B. Jacobs 8-19-13 [[78](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because the plan does not provide for Class 2 Creditor, Sierra Central Credit Union. Debtors' previous plan, confirmed July 3, 2013, included the Creditor in Class 2 claim of \$4,460.70 at 5% interest and a monthly dividend of \$133.69. Trustee has disbursed a total of \$737.37 in principal and interest on the claim.

Debtors' declaration demonstrates Debtors' intent to trade in the vehicle securing Sierra Central's claim to use as a down payment on a newer vehicle. Debtors have not received permission from the court authorizing such transaction and the plan is silent as to the treatment of the claim.

Debtors' Response

Debtors respond to Trustee's opposition to confirmation. Debtors filed an updated declaration in support of their position. According to Debtors' declaration, Debtors made the decision to surrender the vehicle at issue to Sierra Central Credit Union, rendering payment through the plan unnecessary. Debtors' original plan was to purchase another vehicle, but upon finding the cost of such plan too prohibitive, Debtors' parents purchased Debtors a vehicle.

In light of Debtors' declaration, the modified Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed, with the Debtors' amendment providing for the Class 3 treatment of the Sierra Central Credit Union's claim be stated in the order confirming the Plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Amended Chapter 13 Plan, which is consists of the terms set forth in the Plan filed on August 19, 2013, as amended to provide for the Class 3 treatment for the Sierra Central Credit Union Claim, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that Debtors will incorporate the treatment of Sierra Central Credit Union's claim into the Order Confirming the Plan.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee having filed a statement of non-opposition to Debtor's motion, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13
Plan filed by the Debtors having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on August
21, 2013 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if

so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21.	13-20033 -C-13	SHIRLEY SHANNON	MOTION TO SELL
	DBJ-5	Douglas B. Jacobs	8-19-13 [93]

Final Ruling: The Debtor having filed a Withdrawal of the Motion to Sell, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 the Motion to Sell was dismissed without prejudice, and the matter is removed from the calendar.

22. [13-31133](#)-C-13 PETER/SHARI CEKALOVICH MOTION TO VALUE COLLATERAL OF
RK-1 Richard Kwun BANK OF AMERICA, N.A.
8-28-13 [[10](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 28, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6300 Tanbark Court, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$158,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$165,733.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$42,730.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 6300 Tanbark Court, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$165,733.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

23. [13-31234](#)-C-13 ANTHONY/GEORGENIA AKA MOTION TO VALUE COLLATERAL OF
RK-1 Richard Kwun JP MORGAN CHASE BANK, N.A.
Thru #24 8-28-13 [[12](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 28, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6537 Cowboy Way, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$263,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$300,406.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$128,255.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6537 Cowboy Way, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$263,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

24. [13-31234](#)-C-13 ANTHONY/GEORGENIA AKA MOTION TO VALUE COLLATERAL OF
RK-2 Richard Kwun JP MORGAN CHASE BANK, N.A.
8-28-13 [[8](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 28, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8194 Sunrise Blvd, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$245,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$360,107.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$56,700.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8194 Sunrise Blvd, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$245,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

25. [13-21537](#)-C-13 ROBERT/MARLEEN COVINGTON CONTINUED MOTION TO DISMISS
TSB-2 W. Steven Shumway CASE
Thru #26 8-7-13 [[89](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 2, 2013.

Debtors' Response

Debtor Objects to Trustee's Motion on the following grounds:

- (1.) Debtors filed, served, and set for hearing an amended plan.
- (2.) Debtors are current on their payment under their Chapter 13 plan.
- (3.) Debtors delayed in filing an amended plan while they evaluated whether to continue in Chapter 13 or convert their case to Chapter 7.

A review of the docket shows that Debtors filed an amended plan and Motion to Confirm the amended plan on August 27, 2013. However, the court has reviewed the motion to confirm the amended plan and supporting evidence. Dckts. 93, 95, 96. The motion to confirm states with particularity the grounds upon which confirmation is asserted to be proper. Motion, Dckt. 93. However, the declaration fails to provide the court with any testimony from which the court can make the necessary findings of fact and conclusions of law. Declaration, Dckt. 95. The "testimony" provided by the Debtor in the Declaration consists of the following:

- A. He is one of the Debtors in the Chapter 13 case.

- B. The original plan failed to provide for the potential claims of the Internal Revenue Service and the California Franchise Tax Board.
- C. The amended plan provides (in an unstated way) for these two creditors.
- D. The Debtors have reviewed their income and expenses, and have made a minor adjustment to their food expense to afford the plan payment. A copy of the new budget is filed as an unidentified exhibit.
- E. The Debtors find and conclude that the amended plan is the Debtors' best efforts.
- F. The Debtors find and conclude that they will be able to make the payments under the Plan.
- G. The Debtors find and conclude that they have filed their petition in good faith. The Debtors state that they have filed the Plan to provide for the payment of their debts.
- H. The Debtors do not have any support obligations and have filed all applicable tax returns.

Declaration, Dckt. 95.

The only exhibit filed in support of the Motion is the budget referenced in the Declaration. It lists \$3,138.00 in income (which includes \$300 a month "rent" from son) and expenses of \$2,872.00 a month. The Net Monthly Income based on this budget is \$266.00. With respect to the income, no evidence is provided as to son's ability to pay rent of \$300, how long he has been paying \$300 a month rent, and whether he will be a tenant of the Debtors for the 60 months of the Plan. The Debtors did list "rent from son" on Schedule I filed in this case. Dckt. 1 at 38. There is no withholding or taxes paid from the Debtor's other income, which consists of Social Security payments.

The Debtor's personal findings of fact and conclusions of law that they can afford to make the payments, that they have extra income of \$300.00 a month shows that the plan is feasible, and that they are proceeding in good faith does not provide the court with testimony from which it can make the necessary findings of fact and conclusions of law. Possibly the Debtors have provided the Trustee with information concerning the son's "rent payment," his ability to pay, and the Debtors' reasonable expectation that they will have that \$300.00 a month in income during the 60 months of the plan. But out of court information provided the Trustee is not evidence before the court.

It appears that the Plan, Motion, and supporting pleadings filed on August 27, 2013, have been filed to make it appear that there is a feasible plan in process. This "response" was made by the Debtors on the eve of the hearing on the present Motion to Dismiss.

The Motion to Dismiss was filed on August 7, 2013, and set for hearing on September 4, 2013, 28 days later. The Debtors' opposition was due 14 days prior to the September 4, 2013 hearing date - August 21, 2013. Local Bankruptcy Rule 9014-1(f)(1)(B). The Opposition was not filed until August 27, 2013. This adds to the appearance that the Debtors are not prosecuting this case in good faith, but merely throwing up a "Plan" to continue in the protection of the bankruptcy case without any good faith intention to prosecute the case.

The hearing on Trustee's Motion was continued from September 9, 2013 to October 8, 2013 to be heard in conjunction with Debtors' Motion to Confirm the Chapter 13 Plan. On or before September 13, 2013, the Debtors were to have filed and served on the U.S. Trustee and Chapter 13 Trustee supplemental evidence, including competent declarations.

It remains unclear whether Debtors provided the U.S. Trustee and Chapter 13 Trustee with the required documentation. Therefore, dismissal of the case is proper pursuant to 11 U.S.C. § 1307(c).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to
Dismiss is granted and the case is dismissed.

26. [13-21537](#)-C-13 ROBERT/MARLEEN COVINGTON MOTION TO CONFIRM PLAN
WSS-6 W. Steven Shumway 8-27-13 [[93](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). A creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, the Internal Revenue Service, opposes confirmation of Debtors' plan because the plan, while providing for the IRS' secured claim, does not provide for a monthly dividend of the IRS' secured claim. Schedule B reflects that Debtors have personal property valued at \$26,250.00. Of that property, only the Lexus, valued at \$6,000.00, is encumbered. Therefore, the IRS' secured claim attaches to the value of Debtors' other personal property and the IRS should be provided for the same as Debtors are providing for the other secured claimants.

The IRS, the holder of a secured claim, is not willing to accept Debtors' plan and the plan does not meet the alternative requirements of 11 U.S.C. § 1325(a)(5). Therefore, The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

October 8, 2013 at 2:00 p.m.

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27. [13-27240](#)-C-13 MARION/YANINA BEATTY MOTION TO MODIFY PLAN
ET-2 Matthew R. Eason 8-27-13 [[26](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Withdrawn.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to grant the Motion to Confirm. No appearance at the October 8, 2013 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick. However, following Debtors' response, Trustee filed a Notice of Withdrawal, withdrawing his opposition to confirmation. (Dkt. 41). No other opposition to the Motion was filed by creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified
Chapter 13 Plan filed by the Debtors having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on
August 27, 2013 is confirmed, and counsel for
the Debtors shall prepare an appropriate order
confirming the Chapter 13 Plan, transmit the
proposed order to the Chapter 13 Trustee for

approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. [11-30841](#)-C-13 KENNETH/SOPHIA ARMSTRONG MOTION TO MODIFY PLAN
RAC-2 Richard A. Chan 8-21-13 [[53](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on August 21, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. [13-28444](#)-C-13 JOHN/CHERI LAROSE MOTION TO CONFIRM PLAN
MWB-1 Mark W. Briden 8-19-13 [[20](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtors' plan because the plan does not reflect the best efforts of Debtors under 11 U.S.C. § 1325(b) based on the following:

(a.) Debtors's plan provides for the secured claim of BAC Home on real property located at 19837 Loop Street, Anderson, California. Debtors' address as 3009 Joyce Drive, Anderson, California. Debtors' lists on the budget a mortgage payment of \$610.00 per month and \$407.00 per month mobile home space rent. Schedule B lists a 1983 Double Wide Trailer located at 3009 Joyce Drive. Meanwhile, Schedule I does not list any rental income for the Loop Street property and Debtors have not disclosed whether anyone lives in this property.

Trustee is not certain that retention of the Loop Street Property is in the best interests of creditors when Debtors do not reside in the property and receive no rental income from it.

(b.) Debtor lists disability income on Schedule I at \$3,800.00 per month; however, according to the disability statement from EDD, Debtor receives \$955.00 per week, which equals \$4,138.30 per month.

(c.) Debtors' Schedule J lists expenses which may be overstated for a household of two people where only one of the Debtors commutes to work.

The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

30. [12-39445](#)-C-13 AFFONSO LOPEZ AND LEILA MOTION TO MODIFY PLAN
SDB-4 ANDRADA LOPEZ 8-21-13 [[95](#)]
W. Scott de Bie

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 21, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee and a creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Capital One Auto Finance and Chapter 13 Trustee, David Cusick.

Capitol One Auto Finance's Objection

Creditor, Capital One Auto Finance, objects to confirmation of Debtors' Modified Plan because it incorrectly represents the secured and unsecured portions of Creditor's claim.

Creditor filed its Proof of Claim in the amount of \$12,001.74, secured by a 2004 Nissan Pathfinder. Creditor inadvertently filed the Proof of Claim listing a secured amount of \$4,201.74 and an unsecured amount of \$7,800.00. However, as evidenced by the attachment to the claim, the correct secured amount is \$7,800.00 and correct unsecured amount is \$4,021.74. Debtor incorporated the typographical error into its plan. Creditor filed an amended Proof of Claim on September 9, 2013 (Claim 2-2) correcting the error.

As it stands, the plan fails to provide for the retention of a lien securing Creditors' claim and the value of the property to be distributed is less than the allowed amount of Creditor's claim. 11 U.S.C. § 1325(a)(5)(B).

Chapter 13 Trustee's Objection

The Chapter 13 Trustee opposes confirmation of Debtors' plan because the secured claim of Capitol One Auto Finance, when adjusted to reflect the correct secured amount of \$7,800.00, causes the plan to run for 65 months. This exceeds the 60 month limit provided for by 11 U.S.C. § 1322(d).

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

31. [12-39946](#)-C-13 VICTORIA GOKEY
DJC-1 Diana J. Cavanaugh

MOTION TO CONFIRM PLAN
8-27-13 [[70](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 23 days' notice was provided. 42 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been improperly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Chapter 13 Trustee opposes confirmation of Debtor's Plan on the following grounds:

(1.) Debtor did not provide sufficient notice to creditors of the hearing on the Motion to Confirm. Local Bankr. Rule 3015-1(d)(1) requires that modified plan proposed prior to confirmation shall be served at least forty-two (42) days prior to the hearing. Here, Debtor did not file the Notice of Hearing until September 16, 2013, twenty-three (23) days before the hearing.

(2.) Class 2A lists a secured debt owed to Sutter Memorial Hospital in the amount of \$0.00. Debtor proposes to pay \$0.00 to this creditor. Debtors' Schedule D does not list the debt and the claims register reveals no secured claim by this Creditor. Trustee requests an explanation as to why this debt is listed in the amended plan.

(3.) Trustee is not confident Debtor will be able to make plan payments. Debtor recently lost her renter and rental income of \$400.00 per month; however, Debtor is working more hours. Debtor has not provided evidence of the increased wages, despite Trustee's request for copies of her most recent pay stubs.

Discussion

The Local Rules require that movant's notice of the hearing be filed at least forty-two (42) days prior to the hearing, so to be in compliance with Fed. R. Bankr. P. 2002(b) and Local Bankr. R. 9014-1(f)(1). The notice provided here was not timely filed. It was filed twenty-three (23) days before the hearing. Non compliance with the local rules is grounds to deny the motion. See Local Bankr. R. 9014-1(f)(1).

The court is further concerned about the plan feasibility issues raised by the Trustee that require further explanation and disclosure.

The Plan complies does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Debtor failed to appear and be examined at the First Meeting of Creditors held on September 5, 2013. Trustee does not have sufficient information to determine if Plan is suitable for confirmation under 11 U.S.C. § 1325. The hearing has been continued to October 31, 2013 at 10:30 am.

(2.) Debtor has not provided Trustee with a tax transcript of a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).

Trustee's Notice of Withdrawal of Trustee's Motion to Dismiss the Case (Dckt. #23) filed on September 20, 2013 indicates, however, that Debtor has since provided copies of his 2011 and 2012 federal tax returns to Trustee, rendering this issue moot.

(3.) Under 11 U.S.C. § 521(a)(1)(B)(iv.), Debtor has not provided Trustee with 60 days of employer payment advices received prior to filing of the petition.

Trustee's Notice of Withdrawal of Motion to Dismiss Case (Dckt. #23) shows that Debtor has provided "most pay advices" to Trustee (Pg 1, line 26).

(4.) Under 11 U.S.C. § 1325(a)(6), Debtor cannot make payments under the plan or comply with the plan because Debtor proposes to value the secured claim of Santander Consumer USA on a 2003 Jeep, but have not filed a Motion to Value Collateral.

(5.) Section 2.06 of Debtor's Plan (Dckt. #6) indicates that attorney fees of \$2,600 are to be paid through the plan, yet section 2.07 lists \$0 for monthly administrative expenses.

(6.) Debtor's Statement of Financial Affairs lists \$0 income for 2011, 2012, and the year to date. Debtor's Schedule I indicates, however, that he has been employed since 2009.

The Plan does not comply with 11 U.S.C. § 521(a), § 1322, and § 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

34. [13-30458](#)-C-13 BRIAN BOWDEN AND SANDRA OBJECTION TO CONFIRMATION OF
TSB-1 ROSS PLAN BY DAVID P. CUSICK
Scott J. Sagaria 9-12-13 [[18](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on September 12, 2013. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to overrule the Objection as moot, the Debtors having filed an amended plan and a motion to confirm that amended plan. No appearance at the October 8, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan because it will not complete within 60 months, as required by 11 U.S.C. § 1322(d). Debtor's Plan calls for payments of \$700.00 per month for sixty months, for a total of \$42,000.00 to be paid in over the life of the plan. Unsecured creditors are to be paid not less than 0%. Debtors have schedule the following debts be paid through the Plan:

Attorney Fees:	\$1,781.00
Class 2 CAF/Carmax:	\$14,554.00 at 4.75% interest
Class 2 Wells Fargo:	\$12,971.00 at 4.75% interest
Class 5 Franchise Tax:	\$4,246.00
Class 5 IRS:	\$9,835.00
Class 5 Sac County DA:	\$2,390.00

Based on the scheduled amounts, the Plan will take 73 months to pay secured and priority debts in full. According to Trustee's calculations, Debtor will need to pay in a total of \$50,995.01 over the life of the Plan.

Amended Plan

Debtors filed an Amended Chapter 13 Plan on September 24, 2013. Debtor proposes one monthly payment of \$700.00, and then \$865.00 thereafter for the duration of the Plan. Debtors revised several debt amounts, and the above claims are now valued as follows:

Attorney Fees:	\$1,781.00
Class 2 CAF/Carmax:	\$14,802.20 at 4.75% interest
Class 2 Wells Fargo:	\$12,795.22 at 4.75% interest
Class 5 Franchise Tax:	\$4,246.00
Class 5 IRS:	\$7,622.41
Class 5 Sac County DA:	\$3,685.07

Debtor's Amended revised debts and proposed payment of \$865.00 a month after an initial payment of \$700.00 per month will allow the Plan to be completed within 60 months. Thus, Trustee's Objection is overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, the Debtors having filed an amended plan, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled as moot, the Debtors having filed an amended plan and motion to confirm that amended plan, which is set for hearing on November 5, 2013.

Thru #36

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2013. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Chapter 13 Trustee having filed a statement of non-opposition, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated
in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13
Plan filed by the Debtors having been presented to
the court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion is
granted, Debtors' Chapter 13 Plan filed on August
30, 2013 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 19, 2013. 28 days' notice is required. That requirement was met.

Tenative Ruling: The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Sell to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek an order approving the sale of real property commonly known as 33555 Agua Ducle Canton, Agua, California. The property is an undeveloped vacant lot valued at \$21,000.00. As part of Debtors' Chapter 13 Plan, they were to sell their 3 vacant lots with the proceeds of the sale to be paid to the Chapter 13 Trustee in an amount sufficient to complete the Chapter 13 plan.

In compliance with the plan, Debtors placed the properties on the market. Debtors accepted an offer for the subject property of \$21,000.00 in October 2012 (Exh. A) with a deposit of \$5,000.00 to be applied to commission and closing costs. The terms of the sale provide that Debtors will carry a promissory note secured by the real property in the amount of \$18,919.00, with payments of \$250.02 per month at 10% interest for 120 months. (Exh. B).

The Bankruptcy Code permits the trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Pursuant to 11 U.S.C. § 1303, a Chapter 13 debtor has the rights and powers of a trustee under § 363(b). Therefore, pursuant to § 363(b), Debtors can properly bring this motion to sell and the court grants the motion.

On August 21, 2013, Debtors informed their attorney, Timothy Stearns, of the sale and informed Mr. Stearns that they were unaware that sale of the real property required approval by the court. Debtors believe the sale and price terms were reasonable and fair and seek retroactive approval of the sale.

Trustee's Response

Trustee responds to Debtors' Motion to Sell. Trustee states that Debtor has not revealed whether the buyer made payments of June, July, and August 2013, and that the sale should not be approved unless those payments have also been made. According to the Trustee, the plan provided that sale proceeds as needed would be paid into the plan and that these payments were not paid to the Trustee, but "were used to pay normal living expenses" (Declaration, Dkt. 96). The Declaration is dated August 30, 2013, which makes the non-disclosure of these details important. The note payable to Debtor is part of the purchase price, and where the approval is sought after the transaction, the Court should verify that the payments have been made.

The courts decision is to continue the hearing on the motion to sell to permit Debtors sufficient time to provide Trustee with complete disclosure of payment information.

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Sell is continued to **[date]** at **[time]**.

IT IS FURTHER ORDERED that on or before **[date]** the Debtors shall file supplemental pleadings, supported by competent evidence, disclosing all of the sale transactions payments, accounting of the all proceeds, and documenting the payment of the proceeds to the Chapter 13 Trustee or, if not paid to the Chapter 13 Trustee, where such monies are held and the reason for not transmitting them to the Trustee pursuant to the Chapter 13 Plan.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 27, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. [13-30667](#)-C-13 FELICIA LAUESE
CRG-1 Carl R. Gustafson
Thru #40

MOTION TO VALUE COLLATERAL AND
TO AVOID LIEN OF THE BANK OF
NEW YORK MELLON
8-30-13 [[15](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditors and Office of the United States Trustee on August 30, 2013. 28 days' notice is required. That requirement was met.

It is not clear whether the Chapter 13 Trustee was served with the Motion. The Proof of Service states that electronic service was made to "Christopher M. Klein, Chapter 13 Standing Trustee." The Chapter 13 Trustee is David Cusick, and not Christopher M. Klein.

Tentative Ruling: The Motion to Avoid a Judicial Lien has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The tentative decision is to continue the Motion to Avoid a Judicial Lien to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$3,106.37. The abstract of judgment was recorded with Solano County on May 23, 2005. That lien attached to the Debtor's residential real property commonly known as 232 Parkview Terrace, Vallejo, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$160,000 as of the date of the petition. The unavoidable consensual liens total \$251,120.88 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$200 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Avoid Lien is continued to **[date]** at **[time]** to allow Debtor the opportunity to serve the Chapter 13 Trustee.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditors and Office of the United States Trustee on August 30, 2013. 28 days' notice is required. That requirement was met.

It is not clear whether the Chapter 13 Trustee was served with the Motion. The Proof of Service states that electronic service was made to "Christopher M. Klein, Chapter 13 Standing Trustee." The Chapter 13 Trustee is David Cusick, and not Christopher M. Klein.

Tentative Ruling: The Motion to Avoid a Judicial Lien has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The tentative decision is to continue the Motion to Avoid a Judicial Lien to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$3,106.37. The abstract of judgment was recorded with Solano County on May 23, 2005. That lien attached to the Debtor's residential real property commonly known as 232 Parkview Terrace, Vallejo, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$160,000 as of the date of the petition. The unavoidable consensual liens total \$251,120.88 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$200 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Avoid Lien is continued to **[date]** at **[time]** to allow Debtor the opportunity to serve the Chapter 13 Trustee.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditors and Office of the United States Trustee on August 30, 2013. 28 days' notice is required. That requirement was met.

It is not clear whether the Chapter 13 Trustee was served with the Motion. The Proof of Service states that electronic service was made to "Christopher M. Klein, Chapter 13 Standing Trustee." The Chapter 13 Trustee is David Cusick, and not Christopher M. Klein.

Final Ruling: The Motion to Avoid a Judicial Lien has not been properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The hearing on the Motion to Avoid a Judicial Lien is continued to [date] at [time]. No appearance required. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Target National Bank for the sum of \$5,346.13. The abstract of judgment was recorded with Solano County on October 18, 2012. That lien attached to the Debtor's residential real property commonly known as 5034 Brown Land, Fairfield, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$258,000 as of the date of the petition. The unavoidable consensual liens total \$460,155.41 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Avoid Lien is continued to **[date]** at **[time]** to allow Debtor the opportunity to serve the Chapter 13 Trustee.

41. [13-29470](#)-C-13 VASUDEVA BENARD
NLE-1 Peter G. Macaluso
Thru #43

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
9-4-13 [[30](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee's current objection is to the confirmation of Debtor's original Chapter 13 Plan, filed on July 31, 2013. Debtor has since filed an Amended Plan (filed on September 30, 2013) and motion to confirm the amended plan. Trustee's instant objection will be overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, the Debtors having filed an amended
plan and motion to confirm that amended plan
set for hearing in November 2013, and upon
review of the pleadings, evidence, arguments
of counsel, and good cause appearing,

IT IS ORDERED that Objection to
confirmation the Plan is overruled as moot,
with the proposed plan not being confirmed.

42. [13-29470](#)-C-13 VASUDEVA BENARD
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
SCHOOLS FINANCIAL CREDIT UNION
9-3-13 [[20](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3209 Alder Hill Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$225,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$268,000.00. Schools Financial Credit Union's second deed of trust secures a loan with a balance of approximately \$16,389.74. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Schools Financial Credit Union secured by a second deed of trust recorded against the real property commonly known as 3209 Alder Hill Court, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$225,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Value Collateral.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject personal property commonly known as a sofa. The Debtors seek to value the property at a fair market value of \$100.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

Debtor purchased the sofa on May 30, 2013 and RAC Acceptance, LLC financed the purchase. The balance owed to creditor RAC is \$1,000.00.

Creditor's Objection

RAC Acceptance, LLC, Creditor, objects to Debtor's Motion to Value. Creditor argues that Debtor entered into a lease agreement with RAC on May 28, 2013. The purpose of the agreement was to lease property described as "Furniture/Living Room G" pursuant to a renewable lease with a minimum of four (4) monthly renewals. Pursuant to the agreement, RAC, as lessor, retained ownership of the subject property. The agreement contained an Early Purchase Option whereby Debtor could exercise the option and take ownership of the property. Debtor did not exercise the option. On July 15, 2013, Debtor defaulted on the agreement and subsequently filed for bankruptcy on July 17, 2013.

RAC argues that 11 U.S.C. § 506(a) applies only to liens and that Debtor's motion does not set forth any facts to support Debtor's claim that the agreement between RAC and Debtor is a security instrument or that RAC is a secured creditor. Furthermore, RAC argues that an attempt to characterize the lease as a security agreement requires an adversary proceeding. FRBP

Debtor's Response to Creditors Objection

Debtor responds to RAC's objection, arguing that the lease agreement is a disguised purchase money security interest agreement. Debtor comments on the Early Purchase Option RAC discussed in its objection and states that an attachment referenced in the agreement is not actually attached as suggested. Debtor argues that this is not a true lease or there would be no right to purchase the property at the end of the lease.

Debtor characterizes the agreement as a security instrument because the transaction contains the conditional sales clause whereby the seller retains title to the goods sold until the buyer has made payment in full.

Discussion

Upon review of the Consumer Lease Agreement, the court is persuaded that Debtor entered into a lease agreement with Creditor, RAC Acceptance, LLC. The Agreement is clear in stating that ownership of the property remains with RAC while it is lease. The only means for the lessee to acquire the property is to exercise the Early Purchase Option ("EPO"). The Early Purchase Option permits the lessee to purchase the leased property at any time for the price shown on the EPO chart, so long as lease payments are current. The chart is attached, despite Debtor's contention to the contrary. It shows how much the EPO costs based on the number of payments made by the lessee.

From the court's perspective, the RAC is not a secured creditor, as no security agreement exists granting RAC a lien in property of Debtors. Therefore, there no secured claim to value under 11 U.S.C. § 506(a).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed
by Debtors, having been presented to the
court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion
pursuant to 11 U.S.C. § 506(a) is denied.

44. [12-41876](#)-C-13 ALAN/BEVERLY HILL MOTION TO CONFIRM PLAN
MAS-8 Michael A. Scheibli 8-21-13 [[116](#)]

CASE DISMISSED 9/9/13

Final Ruling: The case having previously been dismissed on September 9, 2013, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is
denied as moot.

45. [13-29776](#)-C-13 SUSAN MARRON
EAT-1 Michael David Croddy
Thru #47

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-21-13 [[21](#)]

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and the United States Trustee on August 21, 2013. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection, as moot. No appearance at the October 8, 2013 hearing is required.

Creditor, Deutsche Bank National Trust Company as Indenture Trustee of the Indymac Home Equity Mortgage Loan Asset-Backed Trust, Series 2006-H4, objects to confirmation of Debtors' Chapter 13 plan. Creditor holds a secured claim, as evidenced by a Home Equity Line of Credit agreement dated September 12, 2006, in the original principal sum of \$120,000.00 executed by Debtor ("Note"). The note is collateralized by a second priority deed of trust encumbering the real property commonly known as 11133 Parkland Drive, Truckee, California.

At the time of the filing of this case, the arrearages due under the Note and Deed of Trust totaled \$10,271.36. The Plan incorrectly reflects that at the time of the filing, the loan was current and classifies Creditor's claim as a Class 4 Claim. The Plan also does not provide for the payment of the pre-petition arrearage due under the Note and Deed of Trust.

The court has denied confirmation, without opposition from the Debtor, pursuant to the Objection to Confirmation filed by Deutsche Bank National Trust Company. Such denial renders this Objection moot, and there is no utility to be served in proceeding with an hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by Creditor having been presented to the
court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled as moot, confirmation having been denied pursuant to the Objection of Deutsche Bank National Trust Company.

46. [13-29776](#)-C-13 SUSAN MARRON
MRG-1 Michael David Croddy

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
8-16-13 [[17](#)]

Local Rule 9014-1(f)(2) Motion. Response Filed - Objection Not Opposed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and the United States Trustee on August 16, 2013. 14 days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection. No appearance at the October 8, 2013 hearing is required.

Creditor, Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Trust 2007-AR21IP, Mortgage Pass-through Certificates, Series 2007-AR21IP Under the Pooling and Servicing Agreement dated October 1, 2007, as serviced by OneWest Bank, FSB, objects to the confirmation of Debtor's Plan. Creditor filed its Proof of Claim in the amount of \$926,197.76, including arrearage in the amount of \$4,245.09, which is secured by the real property commonly known as 11133 Parkland Drive, Truckee, California.

Pursuant to 11 U.S.C. § 1322(b)(5) and § 1325, the Plan does not provide for the pre-petition arrearages owed to Creditor. The Plan does not provide for the curing of the default on Creditor's claim, on which final payment is due after the proposed final payment under the Plan. The Plan classifies Creditor's claim as Class 4, but Debtor was delinquent on her obligation at the filing of this petition. Creditor argues that its claim should be classified as a Class 1 Claim.

Debtor's Response

On October 3, 2013, Debtor filed a statement of non-opposition, admitting that her Plan is unconfirmable at this time.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because under 11 U.S.C. § 1325(a)(6), Debtor cannot make payments under the Plan or comply with the Plan. Debtor proposes to value the claim of the Internal Revenue Service, but has not filed a Motion to Value Collateral to date.

The court has denied confirmation, without opposition from the Debtor, pursuant to the Objection to Confirmation filed by Deutsche Bank National Trust Company. Such denial renders this Objection moot, and there is no utility to be served in proceeding with an hearing.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by Creditor having been presented to the
court, and upon review of the pleadings,
evidence, arguments of counsel, and good cause
appearing,

IT IS ORDERED that Objection to
confirmation the Plan is overruled as moot,
confirmation having been denied pursuant to

the Objection of Deutsche Bank National Trust
Company.

48. [13-31376](#)-C-13 CAROLYN MOORE MOTION TO VALUE COLLATERAL OF
MMM-1 Mohammad M. Mokarram BANK OF AMERICA, N.A.
9-3-13 [[10](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3615 Branch Street, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$144,311.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$198,159.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$50,627.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 3615 Branch Street, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$144,311.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

49. [13-24780](#)-C-13 LORETTA SHACKLEFORD MOTION TO CONFIRM PLAN
DPR-3 David P. Ritzinger 8-21-13 [[44](#)]

CASE DISMISSED 9/23/13

Final Ruling: The case having previously been dismissed on September 23, 2013, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm Plan having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on September 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Under 11 U.S.C. § 1325(a)(6), Debtors cannot afford to make payments or comply with the Plan because the Plan relied on two pending motions. Debtors' Plan relies on the Motion to Value Collateral of Bank of America, CAH-1, which was set for hearing on September 24, 2013. The Plan also relied on the Motion to Avoid Judicial Lien of American Express, CAH-2, which was set for hearing on September 24, 2013.

Both the Motion to Value Collateral of Bank of America, CAH-1, and the Motion to Avoid Judicial Lien of American Express, CAH-2 were granted by this court on September 24, 2013. Thus, this issue is rendered moot.

(2.) The Plan relies on continued unemployment benefits and projected Social Security, indicating that Debtor cannot meet 11 U.S.C. § 1325(a)(6). Schedule I filed by Debtors discloses that their ability to make the plan payments is speculative; one Debtor has been unemployed since 2009, and the other since 2012.

Additionally, unemployment benefits are being received, but Debtors have not provided an explanation as to when these benefits may cease. Debtors' budget relies heavily on projected Social Security benefits of 2,228.90, where their total income is project at \$3,832.23 to fund this plan to pay attorney fees and at least 1% to unsecured creditors.

Because the matter of Debtors' ability to make the payments and comply with the Plan has not been resolved, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) The Plan does not provide for all priority debts, as required by 11 U.S.C. § 1322(a)(2). The Internal Revenue Service filed a priority claim listing tax debt of \$5,094.62. The attachment to the claim indicates that returns for 2010 and 2012 have not been filed. Trustee has received a copy of the tax return transcript for 2012, and a copy of the 2010, which is not dated. The Plan does not provide for payment of the priority debt.

(2.) Under 11 U.S.C. § 1325(a)(6), Debtor may not be able to make payments or comply with the Plan. Debtor's Schedule I lists wages of \$1,000.00 and social security of \$1,268.00 per month. Total monthly net income is listed on line 16 as \$2,268.00. Debtor testified at the First Meeting of Creditors held on September 5, 2013, that he is no longer working and now receives social security income of \$1,875.00 per month, but Debtor does not have this income listed on Schedule I.

(3.) Furthermore, Debtor's Statement of Financial Affairs at item #2 does not list any social security income.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Objection to Confirmation to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtor did not appear and consequently, was not examined at the First Meeting of Creditors held on September 5, 2013. Trustee lacks sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. § 1325. The hearing has been continued to October 31, 2013 at 10:30 am.

Debtor's Response

Debtor responds that Trustee is correct, and that Debtor was out of the country and could not rearrange her travel plans upon receipt of the 341 notice (see Exhibit A: Declaration of Debtor Surendra Lal Janam). Debtors request that the court continue this objection until after the continued 341 Meeting scheduled for October 13, 2013.

The court's decision is to continue the hearing on Trustee's Objection to Confirmation to [date] at [time], so that Debtor may attend the continued Meeting of Creditors on October 31, 2013, and to give Trustee an opportunity to examine Debtor and determine the suitability of the Plan for confirmation.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan
filed by the Trustee having been presented to
the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Confirmation of the Plan be continued to **[date] at [time]**.

CASE DISMISSED 8/6/13

Local Rule 9014-1(f)(3) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2013. As a 9014-1(f)(3) motion, there is no required notice period.

The Court's Tentative Ruling is to deny the Motion without prejudice, this trial court being without jurisdiction to alter an order for which an appeal is pending before the Bankruptcy Appellate Panel. The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks an order Vacating the Order to Dismiss the Case entered on August 6, 2013 (Doc. No. 212). The case was dismissed for unreasonable delay that is prejudicial to creditors.

Federal Rule of Civil Procedure 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1.) Mistake, inadvertence, surprise, or excusable neglect;
- (2.) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).
- (3.) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4.) The judgment is void;
- (5.) The judgement has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6.) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Grounds Stated by Debtor

Here, Debtor asserts that the prior order dismissing the case should be vacated because the court inappropriately based its dismissal, under 11 U.S.C. § 1307(c), on unreasonable delay that was prejudicial to creditors. The Debtors argue that the court's order was entered without mention of how the delay was "unreasonable" or how the delay was "prejudicial" to creditors.

Debtor recognizes that there were delays in achieving confirmation of their Chapter 13 plan. In the earlier stages of the case, Debtors were faced with set-backs while trying to negotiate a loan modification and second mortgage forgiveness with Bank of America. According to Debtors, the "flip flopping" nature of Bank of America resulted in several amended plans and several amended income and expense schedules. As of the Fourth Amended Plan, Debtors state that all required payments to Bank of America had been established.

The Fourth Amended Plan was filed on March 25, 2013. None of Debtors' secured creditors opposed the plan; however on May 21, 2013, the plan was not confirmed due to the objection of unsecured creditor Smedberg. Debtors' motion to confirm was denied because the court was unable to evaluate feasibility of a plan because the secured status of Smedberg was in question and because Debtors' income and expense information was old and amendments made to Schedules I and J only corrected errors on the original Schedules. Civil Minutes, Dckt. 194.

On July 30, 2013, Debtors filed a Fifth Amended Plan (Doc. No. 203) and Motion to Confirm the Fifth Amended Plan (Doc. No. 205). Debtors state it is identical to the Fourth Amended Plan, but includes an explanation of Debtors history with Bank of America, how Debtors' income varied, and how a

misunderstanding occurred with the Trustee, all of which required several amended plans with slightly different payments. Debtors allege that the set-backs did not prejudice creditors or delay any required payments to any secured creditor or Trustee.

In conclusion, Debtors remind the court that the Chapter 13 Trustee did not object to Debtors' Fourth Amended Plan, which is identical to the Fifth Amended Plan and that no secured creditors objected to Debtors' Fourth Amended Plan. Furthermore, Debtors highlight that none of the factors under 11 U.S.C. § 1307(c) apply in this instance and the court did not find unreasonable delay that prejudiced creditors in its order to dismiss. Finally, Debtors reassert that the only objector to their plan is Smedberg, who is the entity that caused the delay at issue and is only interested in receiving payment prior to secured creditors.

Trustee's Opposition to Debtor's Motion to Vacate (Dkt. 233)

Trustee opposes Debtor's Motion on the following grounds:

Trustee notes that on August 19, 2013, Debtors filed a Notice of Appeal of the Court's Order Dismissing Debtors' case. The dismissal Order was entered on August 6, 2013. Trustee asserts that Debtors' pending appeal denies the Court jurisdiction to vacate the order.

Trustee basis his argument on *In re Marino*, where the 9th Circuit B.A.P. reiterated that a "pending appeal divests a bankruptcy court of jurisdiction to vacate or modify an order which is on appeal." 234 B.R. 767, (9th Cir. BAP 1999), citing *In re Hagel*, 184 B.R. 793, 798 (9th Cir. BAP 1995). The *Marino* court further stated that filing a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *In re Marino*, 234 B.R. at 767, citing *Trulis v. Barton*, 107 F.3d 685, 694-95 (9th Cir. 1995). The rule that divests lower courts of jurisdiction of aspects of a case involved in an appeal is a judge made doctrine, created to avoid confusion and waste of time. *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000), citing *In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1981).

Trustee further argues that if the court determines that jurisdiction over the Motion to Vacate is proper, then it find that the Order granting Trustee's Motion to Dismiss was not an error. Trustee then reiterates the procedural history of the case outlining unreasonable delay, pursuant to 11 U.S.C. § 1307(c). Notably, Trustee highlights the four Motions to Dismiss filed for unreasonable delay and Debtors' four previous motions to approve the original and amended plans of Debtors.

August 27, 2013 Hearing

At the hearing on Debtors' Motion to Vacate, the court decided to continue the hearing on the Motion to October 8, 2013. Counsel for Debtors was directed to file and serve a supplemental brief on or before September 16, 2013, and Trustee was directed to file and serve his reply, if any, on or before September 30, 2013.

Debtors' Supplemental Brief (Dkt. 242)

On September 16, 2013, Debtors filed a supplemental brief in support of their Motion to Vacate. The purpose of the brief is to further investigate issues related to 11 U.S.C. § 1307(c)(1) and (c)(3), with respect to whether the court had to consider both unreasonable delay and prejudice to creditors under (c)(1); and whether the court had to consider only the first timely plan filed by Debtor under (c)(3).

(1.) 11 U.S.C. § 1307(c)(1)

Under 11 U.S.C. § 1307(c)(1), a plan may be dismissed if there is "unreasonable delay by the debtor that is prejudicial to creditors. Debtors assert that when the court entered a dismissal order on August 6, 2013, the court did not make mentions of how the delay was "unreasonable" and how the delay was "prejudicial" to creditors.

Debtors rely on the plain language of 11 U.S.C. § 1307(c)(1) and *Devito v. Pees* for the proposition that there must be unreasonable delay that is "prejudicial to creditors." 2010 Bankr. LEXIS 3459, *2 (B.A.P. 6th Cir. 2010). In *Devito*, the court discussed 11 U.S.C. § 1307(c)(1) and noted that the key words in the statute are "unreasonable" and "prejudicial" and that not all delays are unreasonable, and not all unreasonable delays are prejudicial. The court then laid out factors to consider when reviewing a lower court's decision to dismiss under 11 U.S.C. § 1307(c)(1). Those factors include:

(1.) Considering the "context of the delay;"

(2.) Whether Debtors has been making payments to the Trustee and others;

(3.) Whether the Trustee had plan payments in the Trustee's possession which were "available for distribution to creditors;" and

(4.) Whether any creditors appears to "object" at the Trustee's motion to dismiss.

Debtors argue that because the court "ignored" the *Devito* factors when it ruled, its decision to dismiss was an abuse of discretion. According to Debtors, the only reason to dismiss offered by the Trustee was the late filing of the fifth Amended plan.

(2.) 11 U.S.C. § 1307(c)(3)

Under 11 U.S.C. § 1307(c)(3), a plan may be dismissed for "failure to file a plan timely under section 1321 of this title." Section 1321 states "the debtor shall file a plan." Debtors assert their first Chapter 13 plan was timely filed and the first meeting of creditors timely occurred and, therefore, Debtors satisfied this rule.

Declaration of George C. Hollister (Dkt. 248)

On September 24, 2013, George C. Hollister, principal of Hollister Law Corporation, attorney for secured creditors Bonnie and Kenneth Smedberg, filed a declaration in support of Trustee's opposition to Debtor's Motion to Vacate. In the declaration, Counsel recounts the history of Debtors' case and the work Counsel engaged in with regard to the multiple amended plans

filed by Debtors. According to Counsel, between May 31, 2012 and May 21, 2013, his clients incurred and paid no less than \$2,632.50 in attorneys fees analyzing and responding to Debtors' motions to confirm. This, counsel concludes, is evidence of prejudice resulting to Creditors as a result of Debtors' delays.

Trustee's Reply to Debtors' Supplemental Brief (Dkt. 252)

On September 26, 2013, the Trustee filed a reply to Debtors' Supplemental Brief in support of their Motion to Vacate. Trustee's reply focuses on 11 U.S.C. § 1307(c)(3) and cites 11 U.S.C. § 1321 and FRBP 3015(b) when discussing the requirements for Debtors to file a plan.

Trustee cites *In re Woods*, a case that discusses unreasonable delay in the context of not timely filing an amended plan. In that case, the court held that the fact "that creditors are stayed from collection but cannot receive payments until a plan is confirmed establishes prejudice from [] unreasonable delay. *In re Woods*, 2012 Bankr. LEXUS 2848 (Bankr. D. ID 2012). Trustee cites this case only for the inference that unreasonable delay may imply prejudice to creditors and concedes that payments have actually issued in the present case pre-confirmation.

Debtors' Objection to the Declaration of George Hollister (Dkt. 255)

Debtors object to the Declaration of George Hollister on two grounds. First, Debtors object because the filing was not allowed by the order of the court. Second, Debtors object because Hollister's clients, Smedberg, did not join in the Trustee's motion to dismiss and, therefore have no standing to now present any argument. Debtors further object to the status of Hollister's clients as secured creditors. Debtors asserting they owe nothing to Smedberg

Discussion

The first issue is that the Debtors have on appeal the court's order dismissing this case. The Debtors ignore this point, and instead proceed to make their appellate arguments as to why this court was incorrect in dismissing the case. Such arguments do not re-vest jurisdiction in this court. The appellate court having the order on appeal, this court cannot alter that order.

Consideration of the Motion

Though this court cannot alter the order which is now before the appellate court, the court has revisited its consideration of the issue in light of the issues raised by the Debtors. The court does not cavalierly issue rulings, nor does it lightly brush off motions raised under Rule 60(b).

The second is that the Debtors object that no creditors "joined" in the motion to dismiss or in the Trustee's objection to this motion. Joinder, as provided by Federal Rule of Civil Procedure 19 and Federal Rule of Bankruptcy Procedure 7019. This is a process by which a plaintiff joins party defendants, not a process by anyone who thinks they want to participate in the hearing forces their way into the proceeding. The Debtors appear to be confusing joinder with intervention. Fed. R. Civ. P.

24 and Fed. R. Bankr. P. 7024. Neither of these Rules are applicable in contested matters, which is the present motion before the court. Fed. R. Bankr. P. 9014.

However, creditors are parties in interest and in connection with motions to dismiss are required to be served and may participate in those proceedings. There must be notice and a hearing for dismissal of a Chapter 13 case pursuant to 11 U.S.C. § 1307(b). Fed. R. Bankr. P. 1017(a). The motion must be set for hearing and noticed as required by Local Bankruptcy Rule 9014-1. As noted in COLLIER ON BANKRUPTCY 16TH EDITION, ¶ 1307.04, notice on creditors is important as each competing group may have different interests in whether a case should be dismissed or allowed to proceed.

The Debtors argue that even though creditors had notice, none of them supported the Motion. Thus, the Debtors conclude that the continuing bankruptcy proceedings could not have prejudiced them. However, an equally plausible explanation is that the creditors did not oppose the motion, relying on the Chapter 13 Trustee to prosecute the motion and get the case dismissed. The court believes that the lack of response by creditors in not opposing the motion is an indication that they Did Not Oppose The Motion and the dismissal of the Debtors' bankruptcy case.

In dismissing the bankruptcy case, the court's findings of fact and conclusions of law (the Civil Minutes, Dkct. 201) include the following:

- A. "The Trustee seeks dismissal of the case on the basis that the debtors have no pending plan after Debtors Motion to Confirm was heard and denied on May 21, 2013 (Docket #194). No subsequent amended plan or Motion to Confirm has been filed. This is the fourth Motion to Dismiss the Trustee has filed for failure to confirm a plan. The Debtors have filed four amended plans all of which have been denied confirmation by the court. The Trustee does not believe that the debtors are able or will be able to confirm a plan in this case."
- B. "On July 30, 2013, the Debtors filed a Fifth Amended Chapter 13 Plan. No motion to confirm has been filed. In denying confirmation of the Fourth Amended Plan the court stated,

'The courts review of the pleadings and Proof of Claim Number 9 indicate that it is not clear whether Creditor is secured or unsecured. Creditor admits that part of its \$154,767 claim is unsecured, while the Declaration of Gerald Toste states that Creditors claim is unsecured, but also indicates that Creditor may have a lien on Debtors real property. Attached to the Proof of claim is an abstract of judgment, but it does not appear to bear the normal recorder stamp for El Dorado County, California. No motion to value Creditors claim has been filed. The court cannot determine whether the plan is feasible without determining whether Creditor is to be provided for as a secured creditor under the proposed plan.'

As to the Debtors income, this case was filed April 6, 2012. Now, almost a year later, the Debtors offer no testimony as to their current income and expenses. All

of the information is a year old. Schedules and Statement of Financial Affairs, Dckt. 1. The Debtors did file Amended Schedules I and J on March 25, 2013, Dckt. 173, but that merely corrects errors in the original Schedules I and J, stating the income and expenses as of April 2012. (Schedule I states INCOME (estimate of average or projected income at the time case filed), and Schedule J states Complete this schedule by estimating the average or projected monthly expenses of the debtor and debtors family at time case filed.)'

Civil Minutes, Dckt. 194."

- C. "The basic defects continue with this Fifth Amended Plan filed twenty-four hours prior to this hearing, after the Debtors having sixty-four days since the order denying confirmation was entered by the court. The Debtors, while initially commencing this case on April 6, 2012 in *pro se*, they have been represented by counsel since May 2012, essentially the entire life of this case. Although the defects in the plan may be easily cured, they have not been. Accordingly, the Trustees concerns remain valid."

While the Debtors believe that there is no "finding" of prejudice, the Civil Minutes reflect the court's conclusion that the Debtors have non-productively resided in bankruptcy since the April 6, 2012 filing of the case and the August 6, 2013 dismissal. After more than a year, the court found that the Debtors were continuing to file the same defective proposed plan and repeating their non-protective activities in the case. The Debtors' stumbling through the case, unable to confirm a plan is prejudice to creditors.

What is interesting, and ignored by the Debtors, is that dismissal of this Chapter 13 case is not a bar on the Debtors filing a new Chapter 13 case. Having learned their lessons in the first case, the debtor and counsel file the new case, file a proposed plan, and quickly get it to confirmation. Rather than doing that, the Debtors have elected a procedure guaranteed to add months and significant legal expenses to the process. Yes, the Debtors may believe they were right and the court should not have dismissed the case when the Debtors could not get around to prosecuting the case and filing the Fifth Amended Plan (which was identical to the Fourth Amended Plan) until 24 hours prior to the noticed hearing on the motion to dismiss the case.

The Debtors squandered 64 days from the denial of the Fourth Amended Plan, and proceeded with filing the Fifth Amended Plan only when hours away from facing the "dismissal executioner hearing date." The Debtors offer no good faith explanation as to how they, in active, reasonable prosecution of the case, could not file a plan sooner than the dismissal hearing date.

The court does not provide persuasive Debtors contention that since 11 U.S.C. § 1307(c)(3) states that "failure to file a plan timely under section 1321 of this title" means that the case may be dismissed only if a debtor fails to initially file the original plan in the case. Once the original plan is filed, the Debtors contend that there is no need to file an amended plan.

This ignores the plan language of 11 U.S.C. § 1307(c). First, the plain language of this section states that the Chapter 13 case may be dismissed for cause, which "includes" the 11 subparagraphs. The subparagraphs are a non-exclusive list, and provide some insight into how Congress viewed cause.

A debtor must file a plan within 14 days after the filing of a Chapter 13 petition or conversion of the case to one under Chapter 7. Fed. R. Bankr. P. 3015. This 14-day time period establishes the general time line for how long a Chapter 13 case should be sitting without some plan before the court.

However, 11 U.S.C. § 1321 does not state that the Debtor shall file "one" plan, but that "the debtor shall file a plan." Without a plan being filed, there is no prosecution of the Chapter 13 case which may occur. The case merely sits in limbo as far as any direction for rehabilitation of the debtor, what the Chapter 13 Trustee must do, and what payments are to be made by the debtor.

The Debtors also ignore the line of cases which hold that dismissal of a bankruptcy case is proper where there has been a denial of confirmation or confirmation is unlikely. In *Badalyan v. Holub (In re Badalyan)*, 236 B.R. 633, 638 (B.A.P. 6th Cir. 199), the Bankruptcy Appellate Panel affirmed the dismissal of a bankruptcy against a *pro se* debtor for the failure to file a plan which met the standards for a confirmable plan. Though the Debtor had filed a plan, the court pursuant to an order to show cause properly dismissed the case.

If the court had the authority to revisit this issue, the conclusions would not be different. The Debtors were not prosecuting the Chapter 13 case. The Debtors were filing plans only when forced to by the Chapter 13 Trustee as demonstrated in the following chart.

April 1, 2012 First Amended Plan Filed. No Motion to Confirm Filed, No Hearing Set for Confirmation of Plan	
June 12, 2012 motion to dismiss, Dckt. 24	June 18, 2012 Filing of Second Amended Plan, Dckt. 31 Motion to Confirm Filed July 10, 2012, Dckt. 52. (78 days from filing of prior plan which was not prosecuted.)
	September 11, 2012, the Debtors Dismissed their Motion to Confirm Plan Without Prejudice, Dckts. 81, 85
December 12, 2012 Motion to Dismiss, Dckt. 97	December 26, 2012 Filing of Third Amended Plan, Dckt. 101 Motion to Confirm Filed December 26, 2012, Dckt. 103. (106 days from dismissal of motion to confirm prior plan.)

January 9, 2013, Dismissal Without Prejudice Motion to Dismiss, Dckts. 111, 123.	
	Motion to Confirm Plan Denied, February 12, 2013, Order filed March 1, 2013; Dckts. 156, 166.
February 27, 2013 Motion to Dismiss, Dckt. 158.	
March 27, 2013 Hearing on Motion to Dismiss. Hearing Continued to May 8, 2013. Dckts. 182, 184.	Fourth Amended Plan and Motion to Confirm Filed March 25, 2013. (42 days from denial of confirmation of prior plan.)
Motion to Dismiss Denied Without Prejudice on May 8, 2013, Dckt. 193	
	May 29, 2013, Motion to Confirm Fourth Amended Plan is Denied, Dckts. 194, 196.
July 17, 2013 Motion to Dismiss Filed, Dckt. 197, July 31, 2013 Hearing.	July 30, 2013, Fifth Amended Plan Filed, Dckt. 203. (63 days from denial of prior plan).

The failure of a debtor to propose and then confirm a plan is of prejudice to creditors by the very nature of a Chapter 13 case. Until the plan is confirmed and the debtor is "locked-in" to the terms, the creditors are in limbo and the debtor is operating in an environment in which he or she may have obligations to perform, or may not have obligations, switching as multiple amended plans are filed.

Here, this is not a situation in which the Debtors have been attempting to diligently prosecute the case and have suffered some impediments. Rather, they have not prosecuted the case, requiring the Chapter 13 Trustee to be a "legal nanny," repeatedly nagging them to file a plan and prosecute the case.

The Debtors did not prosecute their case, they did not timely act to file amended plan, the Debtors acted only when facing multiple motions to dismiss the case filed by the Chapter 13 Trustee, and the failure to prosecute their case and obtain confirmation of a plan which would fix the rights of the creditors and Debtors after being in this Chapter 13 case for 16 months was of prejudice to creditors.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Vacate Dismissal filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

October 8, 2013 at 2:00 p.m.

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IT IS ORDERED that Motion to Vacate Dismissal is denied without prejudice, the order dismissing the case now on appeal before the Bankruptcy Appellate Panel.

54. [12-26789](#)-C-13 GERALD/ROBIN TOSTE CONTINUED MOTION TO CONFIRM
CGK-19 Charles G. Kinney PLAN
7-30-13 [[205](#)]

CASE DISMISSED 8/6/13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2013. 42 days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors case was dismissed on August 6, 2013. Debtors filed a Motion to Vacate Dismissal and Reinstate Chapter 13 Case on August 8, 2013. At the hearing on August 27, 2013, the court continued the hearing on Debtors' Motion to Vacate to October 8, 2013 at 2:00 p.m. Therefore, the current Motion to Confirm was continued to October 8, 2013 at 2:00 p.m.

The Chapter 13 Trustee opposes confirmation of Debtors' plan because this case was dismissed at the hearing held on July 31, 2013. Trustee requests that confirmation be denied.

Debtors' Response

Debtor responds to Trustee's opposition, noting that the Trustee did not object to the Fourth Amended Plan and that the Fifth Amended plan subject to the current motion, has the same numbers as the Fourth. The only difference between the plan is that the Fifth includes a better explanation of why prior plans varied in amounts. Debtors assert that they satisfied all requirements to have the Fifth Amended plan approved.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm is ----- .

Local Rule 9014-1(f)(2) Motion. Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 4, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor having filed an opposition the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Trustee is unable to determine whether Debtor can make payments under the Plan or comply with the Plan under 11 U.S.C. § 1325(a)(6) because Trustee cannot determine the Plan's feasibility. Debtor's Schedule I shows at least a portion of Debtor's income is from family contributions; however, Debtor has not filed Declarations by contributors to prove that these contributions are likely to occur.

(2.) All creditors have not been served notice as required by FRBP 2002(b). Debtor lists Alamo Car Rentals on Schedule F with an unsecured claim of \$18,000, but does not list an address for notice of bankruptcy filing to be sent. It appears that the creditor has not been noticed of the filing of bankruptcy or deadlines to file claims.

Debtor's Response

Debtor responds to Trustee's first point, about the lack of declarations by contributors to demonstrate that their contributions are likely to occur, by filing a declaration from the contributor (Debtor's mother). The Declaration states that Debtor's mother will contribute \$80 per month to her Debtor daughter to assist with the proposed Chapter 13 Plan.

As to Trustee's second point, Debtor filed an amended matrix and Schedule D on September 13, 2013. A review of Docket #25 shows that an Amended Verification and Master List, listing Alamo Car Rentals, has been filed, thereby correcting Debtor's error (presuming that Alamo Car Rentals has been served with notice of the bankruptcy case).

Thus, Trustee's issues have been resolved and the objection will be overruled as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled as moot.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2013. 42 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Confirm the Plan.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan for the following reasons:

(1.) Debtor filed amended Schedules I and J, which reflect an increase in income by \$567.33 and increase in expenses by \$567.33 without any explanation. Trustee is unable to determine Debtor's ability to make payments and the feasibility of the plan.

(2.) Debtor's amended Schedule I adds \$567.33 in monthly income derived from tax refunds. Debtor has not proven he should receive a tax refund. Debtor does not list any tax refund on Schedule B. 11 U.S.C. § 1325(a)(1).

(3.) Schedule I shows net monthly income from an unidentified second job of \$712.06, income assistance from mother of \$200.00, and income assistance from brother of \$400.00. Debtor previously filed declarations explaining the income assistance, but has not referenced them in the present motion. 11 U.S.C. § 1325(b).

(4.) Debtor's food expenses increased from \$350.00 to \$584.00 without explanation (though one could argue that a \$584.00 a month food expense is much closer to a realistic amount than the \$350.00).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 4, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to set the Motion to Value for an evidentiary hearing at [time] on [date]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2006 Ford F-150 XL. The Debtor seeks to value the property at a replacement value of \$9,085.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to filing of the petition, with a balance of approximately \$11,567.75.

Ford Motor Credit's Opposition

In response to Debtor's Motion to Value, Creditor, Ford Motor Credit Company, disputes Debtor's opinion of value. Creditor relies on *NADA Guidelines* for valuation and asserts that the proper value of the vehicle, for purposes of 11 U.S.C. § 506(a), is \$12,875.00. Creditor also contends that the balance owed by Debtor is \$12,069.81.

Debtor's Reply

Debtor replies to Creditor's opposition, arguing that Creditor's valuation method did not consider the age and condition of the vehicle at the time it was valued. 11 U.S.C. § 506(a). Debtor asserts the vehicle is not in excellent condition. Debtor continues to cite various deficiencies with the vehicle.

Debtor and Creditor present opposing opinions of value, neither based upon a verified appraisal. The value of the vehicle is a material fact over which there is a genuine dispute. Therefore, the court's decision is to

set an evidentiary hearing on [date] at [time] to resolve the valuation question at issue in this matter.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that an evidentiary hearing on the Motion to Value shall be conducted at [time] on [date].

Local Rule 9014-1(f)(3) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on October 1, 2013.

Tentative Ruling: The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to grant the Motion to Sell. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek an order approving the sale of real property commonly known as 644 Norgard Court, Sacramento, California. The prospective buyer, A. Guerrero, made an offer to purchase the property at \$145,000.00 (Dkt. 95). The value of the property is estimated at \$92,000.00. There are no monetary encumbrances on the property. If sale is approve, and after costs and fees, Debtor's estimated settlement statement is \$124,640.00.

The Bankruptcy Code permits the trustee to sell property of the estate after a noticed hearing. 11 U.S.C. § 363(b). Pursuant to 11 U.S.C. § 1303, a Chapter 13 debtor has the rights and powers of a trustee under § 363(b). Therefore, pursuant to § 363(b), Debtors can properly bring this motion to sell and the court grants the motion.

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Sell having been
presented to the court, and upon review of the
pleadings, evidence, arguments of counsel, and
good cause appearing,

IT IS ORDERED that the Motion to
Sell is granted and Debtor is authorized to
sell the property located at 644 Norgard
Court, Sacramento, California for \$145,000.00.